



## Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Pesticide Control Board
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 20 -30
<b>Regulation title</b>	Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act
<b>Action title</b>	Amend
<b>Document preparation date</b>	Enter date this form is uploaded on the Town Hall

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#excreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#excreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The existing regulations establish fees, renewal dates, and late fees for the registration of pesticides, certification of commercial applicators and registered technicians and licensing of pesticide businesses. The proposed amendments (i) delete obsolete references to pesticide product registration fees; (ii) establish certification periods and fees for commercial applicators and registered technicians; and (iii) establish fees for adding a category or subcategory to an existing commercial pesticide applicator's certificate. The proposed amendments also clarify the intent and meaning of the regulation.

### Statement of agency final action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Virginia Pesticide Control Board adopted amendments to Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act on April 15, 2004.

## Legal basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Section 3.1-249.30 of the Code of Virginia provides the discretionary authority for the regulation. Section 3.1-249.30 of the Code of Virginia authorizes the Pesticide Control Board (Board) to promulgate regulations in regards to fees as follows: "...the Board may promulgate regulations... including but not limited to the following: ... 7. Establishing a fee structure for licensure, registration and certification to defray the costs for implementing this chapter." In addition, §§ 3.1-249.35, 3.1-249.36, 3.1-249.47 and 3.1-249-52 notes the Board's mandatory authority for promulgating a fee schedule in support of § 3.1-249.30.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

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These regulations are essential to the health and welfare of Virginia citizens because (i) registration of pesticide products protects against extremely hazardous pesticides being sold to Virginia citizens or improperly labeled pesticides that can lead to human health problems, including death, if application, mixing, storing and disposal instructions are ambiguous or misleading; (ii) certification that pesticide applicators and registered technicians are properly trained so they may apply pesticides in a manner that will not harm the public or environment; and (iii) licensing of pesticide businesses to ensure that businesses that engage in the sale and or application of pesticides are aware of the potential hazards that pesticides pose to human health or the environment.

The proposed regulations set fees for (i) pesticide products offered for sale in the Commonwealth; (ii) commercial pesticide applicators providing pest control services to citizens of the Commonwealth; (iii) registered technician applicators providing pest control services to citizens of the Commonwealth; and (iv) pesticide businesses operating in the Commonwealth. In addition to the fee structure, these regulations establish renewal deadlines and late fees.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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Substantive changes to existing sections include:

1. Deletion of language referring to earlier pesticide product registration fees that have subsequently become outdated thereby establishing a single pesticide product registration fee.
2. Establishment of a two-year certification period and fee for a commercial pesticide applicator's certificate and a biennial renewal fee.

3. Establishment of a fee for adding a category or subcategory to a pesticide applicator’s certificate.
4. Establishment of a two-year certification period and fee for a registered technician’s certificate and a biennial renewal fee.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;  
 2) the primary advantages and disadvantages to the agency or the Commonwealth; and  
 3) other pertinent matters of interest to the regulated community, government officials, and the public.

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The advantages of the amendments include (i) the regulation will be easier to read and understand for the industry and the regulators; (ii) the certification fee period and the certificate dates will coincide making it easier for the regulated community, public and the agency and reducing confusion for the regulated community and the public; and (iii) the regulated community will know the cost for adding a category or subcategory to their certificate.

There are no disadvantages to the public or the Commonwealth of Virginia.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
2 VAC 20-30-40	Fee for any commercial applicator reexamination shall be \$30.	Fee for this reexamination shall be \$30. This section refers to registered technician fees and not commercial applicator fees.

**Public comment**

*Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.*

Commenter	Comment	Agency response
Ashe B. Exum, Sr., President	Base pesticide registration renewal fees upon estimated	The Agency has in the past implemented a two tier pesticide registration fee system whereby

Happy Jack, Inc.	annual sales or cap pesticide registration fees based upon total revenues of the registrant.	pesticide registrants having less than \$5,000 annual wholesale sales in Virginia of a particular pesticide were charged a \$50 pesticide registration fee for that pesticide. If sales were greater than \$5,000, the pesticide registration fee was \$125. The Agency found that over time a greater number of pesticide registrants were registering their pesticides at the lower fee. Resources were not sufficient to employ auditors to visit pesticide registrants to verify their Virginia sales data. Without a method to verify Virginia sales data, it was impossible to determine if the registrant was paying the correct pesticide registration fee.
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**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
2 VAC 20-30-10  2 VAC 20-30-20		<p>The definition of Limited Quantities includes the word nonrestricted.</p> <p>The fee for registering a pesticide “shall be \$140 for the product registration period beginning January 1, 1995; \$150 for the product registration period beginning January 1, 1997; and \$160 for the product registration period beginning January 1, 1999.”</p> <p>“If the registration is not renewed prior to December 31 of each year, the commissioner shall assess a late fee of 20% which shall be added to the registration fee.”</p>	<p>Change the spelling of the word nonrestricted to non-restricted. The proposed change is to correct spelling.</p> <p>The fee for registering a pesticide “shall be \$160.” The proposed change is a deletion of language referring to earlier pesticide product registration fees that have subsequently become outdated thereby establishing a single pesticide product registration fee of \$160.</p> <p>“If the registration is not renewed prior to December 31 of each year, the commissioner shall assess a late fee of 20% that shall be added to the registration fee.” The proposed change is a grammatical correction.</p>

<p>2 VAC 20-30-30</p>		<p>Any person applying for a commercial pesticide applicator certificate shall pay an initial nonrefundable fee of \$35 and an annual nonrefundable renewal fee of \$35 thereafter.</p> <p>All certificates expire at midnight June 30 of each year.</p> <p>“All certificates not suspended or revoked for cause will be renewed upon receipt of the annual renewal fee.”</p> <p>“ . . . the commissioner shall assess a late filing fee of 20% which shall be added to the renewal fee.”</p> <p>The fee for any commercial pesticide applicator reexamination shall be \$35.</p> <p>No fee for applying to add a category or subcategory to a pesticide applicator certificate.</p>	<p>Any person applying for a commercial pesticide applicator certificate shall pay an initial nonrefundable fee of \$70 and a biennial nonrefundable renewal fee of \$70 thereafter. The proposed change establishes the same timeframe for certification (training) and certificates so both expire at the same time. In addition, it assists our clients by eliminating confusion over certification and certificate expiration dates.</p> <p>All certificates expire at midnight June 30 in the second year after issuance. The proposed change is necessary for a two-year certification period.</p> <p>“All certificates not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee.” The proposed change reflects the proposed change earlier in 2 VAC 20-30-30 regarding a biennial renewal fee.</p> <p>“ . . . the commissioner shall assess a late filing fee of 20% that shall be added to the renewal fee.” The proposed change is a grammatical correction.</p> <p>The fee for any commercial pesticide applicator reexamination shall be \$70. The proposed change synchronizes the fee for reexamination with the initial and renewal fees for a pesticide applicator certificate.</p> <p>A new requirement that adds a \$35 nonrefundable fee for applying to add a category or subcategory to a pesticide applicator certificate. The proposed change addresses the requirement in 2 VAC 20-51-30 that “Individuals seeking certification as commercial applicators must pay a fee as determined by regulations promulgated by the Pesticide Control Board.”</p>
<p>2 VAC 20-30-40</p>		<p>Any person applying for a registered technician certificate shall pay an initial nonrefundable fee of \$15 and an annual nonrefundable renewal fee of \$15 thereafter.</p>	<p>Any person applying for a registered technician certificate shall pay an initial nonrefundable fee of \$30 and a biennial nonrefundable renewal fee of \$30 thereafter. The proposed change establishes the same timeframe for certification (training) and certificates so both expire at the same time. In addition, it assists our clients by eliminating confusion over certification and</p>

<p>2 VAC 20-30-50</p>		<p>All certificates expire at midnight June 30 of each year.</p> <p>“A certificate not suspended or revoked for cause will be renewed upon receipt of the annual renewal fee.”</p> <p>The fee for any commercial pesticide applicator reexamination shall be \$15.</p> <p>“Merchants of limited quantities of nonrestricted use pesticides . . .”</p>	<p>certificate expiration dates.</p> <p>All certificates expire at midnight June 30 in the second year after issuance. The proposed change is necessary for a two-year certification period.</p> <p>“A certificate not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee.” The proposed change reflects the proposed change earlier in 2 VAC 20-30-30 regarding a biennial renewal fee.</p> <p>The fee for a registered technician reexamination shall be \$30. The proposed change synchronizes the fee for reexamination with the initial and renewal fees for a registered technician certificate.</p> <p>“Merchants of limited quantities of non-restricted use pesticides . . .” The proposed change is to correct spelling.</p>
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**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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Unless otherwise discussed in this report, this regulation has no impact upon families.